

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

v.

BARRY THOM, *et al.*,

Defendants,

and

ALASKA TROLLERS ASSOCIATION;
and STATE OF ALASKA,

Defendant-Intervenors.

Case No. 2:20-cv-00417-RAJ-MLP

SECOND DECLARATION OF BRIAN
A. KNUTSEN

I, Brian A. Knutsen, declare the following on the basis of personal knowledge to which I
am competent to testify:

1. I am co-counsel for Plaintiff Wild Fish Conservancy (“Conservancy”) in this
litigation;

2. On Wednesday, April 28, 2021, I held a telephonic meeting with counsel for all
parties to this litigation to confer on Plaintiff’s Motion for Summary Judgment. Participants to

1 the conferral were: for the Conservancy, Eric Lindberg, Emma Bruden, Jessica Durney, and
2 myself; for Federal Defendants Barry Thom, et al. (collectively, "NMFS"), Frederick Turner; for
3 Defendant-Intervenor Alaska Trollers Association, Douglas Steding; and for Defendant-
4 Intervenor the State of Alaska, Aaron Peterson. The conferral included a discussion of the
5 liability issues to be addressed in Plaintiff's Motion for Summary Judgment and the relief to be
6 requested. Counsel for NMFS, for Defendant-Intervenor Alaska Trollers Association, and for
7 Defendant-Intervenor the State of Alaska have indicated that their clients oppose the motion.
8

9 3. Attached hereto as Exhibit 1 is a true and accurate copy of a document provided
10 to me by NMFS in response to a request for public records submitted under the Freedom of
11 Information Act seeking, *inter alia*, documents related to NMFS's funding and/or proposed
12 funding of new and/or increased hatchery production in an effort to benefit Southern Resident
13 Killer Whales as described in the 2019 SEAK BiOp;
14

15 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
16 and correct.
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18 Executed this 5th day of May, 2021 at Portland, Oregon.

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20 s/ Brian A. Knutsen

21 Brian A. Knutsen, WSBA No. 38806
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EXHIBIT 1

Hatchery Production Initiative for Southern Resident Killer Whales

FY20 Report

January 8, 2021

Introduction

The Pacific Salmon Treaty (PST) provides a framework for the United States and Canada to cooperate on the management of Pacific salmon. A high degree of cooperation is required to prevent overfishing, provide optimum production, and ensure that each country receives benefits that are equivalent to the production of salmon in its waters. The United States and Canada have negotiated treaty agreement provisions for the period of 2019-2028, and the National Marine Fisheries Service (NMFS) has completed three biological opinions, which evaluate the effects of domestic actions associated with implementing the new agreement on species listed under the Endangered Species Act (NMFS 2019). These biological opinions address fisheries in Southeast Alaska, the Pacific Fishery Management Council ocean salmon fisheries, and Puget Sound fisheries.

The proposed action and environmental baseline analyzed in the biological opinions includes funding to increase hatchery production to provide prey for endangered Southern Resident killer whales (SRKW). The Southeast Alaska biological opinion describes the action as follows:

“A preliminary design of the SRKW hatchery production program was developed, and is described below, in order to provide cost estimates and further definition for how the program should be designed and implemented to achieve the “meaningful increase” in prey availability that is intended. The preliminary design should be used as a benchmark for evaluating the program that will presumably be funded and implemented. However, there is flexibility to adjust the design to account for new information so long as the key objective of the program is met. By key objective we focus in particular on the intention to increase prey availability by 4-5 percent in areas that are most important to SRKWs as described below.

The new production should be distributed broadly to supplement prey abundance in Puget Sound in the summer and offshore areas in the winter, times and areas that have been identified as most limiting. The hatchery production program would operate each year at a cost of no less than \$5.6 million per year including an adjustment for administrative overhead. The goal of the hatchery production initiative for supplementing prey abundance is to provide a “meaningful” increase in the abundance of age 3-5 Chinook salmon in the times and areas most important to SRKWs. It would be prioritized to increase abundance in inside areas (Puget Sound) in the summer and outside areas (coastal) during the winter where we believe prey abundance is most limiting (Dygert et al. 2018). For the estimated cost per year an additional 20 million Chinook salmon smolts could be expected. Five or six million smolts should come from facilities in Puget Sound with the remainder from the Washington coast and Columbia River. This disproportionate distribution results from the fact that the abundance of Chinook salmon in the ocean is about three times higher than it is in the Puget Sound. Increasing production by 20 million smolts with the above described distribution is expected to increase prey abundance by 4-5 percent in inside areas in the summer and coastal areas in the winter (Dygert et al. 2018).

“For purposes of this analysis, we assume that funding for the conservation program for Puget Sound Chinook salmon and SRKW will be forthcoming largely as described and the program will be implemented during the duration of the new Chinook salmon regime as proposed. The benefits from reduction in harvest in SEAK and other fisheries resulting from the new PST Agreement will be effective immediately. However, it is important to note that the effects assumed in the analysis related to the funding initiative will not take place for at least four to five years into the

future as funding is attained, fish from the conservation hatchery programs reach maturity in the oceans and productivity improvements are realized from the habitat mitigation. We recognize that there is a degree of uncertainty regarding whether Congress will provide the funding, in whole or in part, that was agreed to by the U.S. Section in a timely manner. In the event the required funding is not provided in time for actions to take effect during the agreement, or if the anticipated actions are not otherwise implemented through other means (e.g., non-fishing related restoration activities, other funding sources) this may constitute a modification to the proposed action that could result in effects on Puget Sound Chinook salmon and SRKW not considered in this opinion. If this was answered in the affirmative, reinitiation of consultation would therefore be required. See 50 CFR section 402.16(c). We expect this opinion and ITS to remain in place during the interim should reinitiation occur.”

Washington State Funding for SRKW Prey

In response to recommendations from the Washington State Southern Resident Killer Whale Task Force (2018), the Washington State Legislature provided ~\$13 million of funding “prioritized to increase prey abundance for southern resident orcas” (Engrossed Substitute House Bill 1109) for the 2019-2021 biennium (July 2019 through June 2021). In 2020, over 10.8 million additional hatchery-origin Chinook salmon were released to augment the SRKW prey base. More than 10.1 million additional hatchery-origin Chinook salmon are anticipated for release in 2021 (Table 1).

PST Implementation Funding for SRKW Prey

The U.S. Commissioners allocated \$5.6 million of the PST federal appropriation for FY20 that would complement the state funded hatchery production. Of this \$5.6 million, \$738,509 was reserved by NMFS for administrative costs and the remainder was available for grants.

Proposals for new hatchery production and associated infrastructure were solicited from the Treaty tribes of western Washington and the Columbia River Basin, U.S. Fish and Wildlife Service, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and other operators of hatchery programs in the region. The following criteria were used to prioritize funding for candidate programs:

- Criteria 1: Increased hatchery production should be for Chinook stocks that are a high priority for SRKW (NMFS and WDFW 2018; Ad-hoc SRKW Workgroup 2020)
- Criteria 2: Increased production should be focused on stocks that are a high priority for SRKW (NOAA and WDFW 2018), but funding should be distributed so that hatchery production is increased across an array of Chinook stocks from different geographic areas and run timings (i.e., a portfolio)
- Criteria 3: Increased production cannot jeopardize the survival and recovery of any ESA-listed species, including salmon and steelhead
- Criteria 4: Because of funding and timing constraints, increased production proposals should not require major capital upgrades to hatchery facilities
- Criteria 5: All proposals should have co-manager agreement, as applicable
- Criteria 6: All increased production must be reviewed under the ESA and NEPA, as applicable, before NMFS funding can be used

In addition, funding was prioritized for programs located on the Washington Coast or Columbia River rather than in Puget Sound. This reflects that hatchery production newly funded by Washington State resulted in an increase in Puget Sound Chinook production that approximated the NMFS guidance for

regional distribution of the production in the biological opinion, while a gap remained for the Washington Coast and Columbia River¹.

Table 2 describes the hatchery programs that were funded in FY20 with PST funds. This production is in addition to the hatchery production funded by the Washington State Legislature for the 2019-2021 biennium (Table 1). As a result of the FY20 PST funds, 750,000 hatchery-origin Chinook salmon were released in 2020, 8.25 million are expected to be released in 2021, and 3.9 million Chinook salmon are expected to be released in 2022.

Table 3 describes the hatchery program proposals that were not funded in FY20 and the rationale for our decisions.

Table 4 describes new Chinook hatchery production that is currently being funded by the Bonneville Power Administration, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the Nez Perce Tribe. These entities expect to release a combined 1.0 million additional Chinook salmon in 2021 and 1.91 million in 2022.

Conclusion

As a result of the additional funding for hatchery production to support SRKW (FY20 PST funding and 2019-2021 Washington State Legislature funding), over 11.6 million additional hatchery-origin Chinook salmon were released in 2020 and over 18.3 million additional hatchery-origin Chinook salmon are expected to be released in 2021 relative to the base period considered in NMFS' 2019 biological opinion on the delegation of management authority for specified salmon fisheries to the State of Alaska (NMFS 2019; Table 1; Table 2). Furthermore, an additional 1.0 million new Chinook salmon funded through other sources (e.g., Bonneville Power Administration) are also expected to be released in 2021 (Table 4).

¹ This priority and associated distribution of PST Implementation Funds will be revisited should Washington State support for Puget Sound hatchery production decline over the duration of Chinook Agreement.

References

- Ad-hoc SRKW Workgroup. 2020. Pacific Fishery Management Council Salmon Fishery Management Plan impacts to Southern Resident Killer Whales. Final Draft Risk Assessment. Pacific Fisheries Management Council. February 2020. 164p.
- Dygert, P., A. Purcell, and L. Barre. 2018. Memorandum to Bob Turner (NMFS) from Peter Dygert (NMFS). Hatchery production initiative for increasing prey abundance of Southern Resident Killer Whales. August 1, 2018. NMFS, Seattle, Washington. 3p.
- NOAA and WDFW (National Oceanic and Atmospheric Administration and Washington Department of Fish and Wildlife). 2018. Southern Resident Killer Whale Priority Chinook Stocks Report. June 22, 2018. 8p.
- NMFS. 2019. Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response. Consultation on the Delegation of Management Authority for Specified Salmon Fisheries to the State of Alaska. NMFS Consultation Number: WCR-2018-10660. April 5, 2019. 443 p.
- Washington State Southern Resident Orca Task Force – Report and Recommendations. 2018. November 16, 2018. 148 p.

Table 1. Washington State Funding for SRKW Prey in the 2019-2021 biennium

Facility	Region	Species	Entity	Increased Proposal	Brood Source	Release Location	2019 Release	2020 Release	Anticipated 2021 Release
Kendall	Puget Sound	Sp. CK	WDFW	500,000	Kendall	Kendall	660,527	421,381	500,000
Whatcom Cr.	Puget Sound	F. CK	WDFW	500,000	Samish	Whatcom Cr.	200,000	670,000	500,000
Hupp Springs	Puget Sound	Sp. CK	WDFW	500,000	Minter	Hupp	259,873	388,909	500,000
Samish	Puget Sound	F. CK	WDFW	1,000,000	Samish	Samish	1,089,148	1,217,867	-
Wallace River	Puget Sound	Sum. CK	WDFW	400,000	Wallace River	Wallace River	-	260,745	500,000
Wallace River	Puget Sound	Sum. CK	WDFW	100,000	Wallace River	Wallace River	-	34,938	100,000
Soos/Palmer	Puget Sound	F. CK	WDFW	2,000,000	Green River	Palmer	282,638	1,210,986 ^a	-
Marblemount	Puget Sound	Sp. CK	WDFW	400,000	Marblemount	Marblemount	-	203,095	410,000
Sol Duc	WA Coast	Sum. CK	WDFW	500,000	Sol Duc	Sol Duc	500,143	582,479	500,000
Sol Duc	WA Coast	Sum. CK	WDFW	0	Sol Duc	Sol Duc	-	-	75,000
Humptulips *	WA Coast	F. CK	WDFW	500,000	Humptulips	Humptulips	-	-	-
Minter	Puget Sound	F. CK	WDFW	400,000	Minter	Minter	763,333	321,497	400,000
Naselle	WA Coast	F. CK	WDFW	2,500,000	Naselle	Naselle	-	-	1,400,000
Forks Creek	WA Coast	F. CK	WDFW	50,000	Forks Creek	Forks Creek	567,560	2,278,497	400,000
Wells Hatchery	Columbia River	Sum. CK	DPUD	500,000	Wells	Wells Hatchery	0	541,299	500,000
Quinault Lake	WA Coast	F. CK	Quinault Indian Nation	500,000	Quinault	Quinault Lake	-	-	500,000
Sol Duc/Bear Springs	WA Coast	Sum. CK	Quileute Tribe	75,000	Sol Duc	Bear Springs	-	70,000	70,000

Facility	Region	Species	Entity	Increased Proposal	Brood Source	Release Location	2019 Release	2020 Release	Anticipated 2021 Release
Wilkeson Creek	Puget Sound	F. CK	Puyallup Tribe of Indians	1,075,200	Voights	Wilkeson Creek	-	728,587	1,075,200
White River	Puget Sound	Sp. CK	Muckleshoot Indian Tribes	200,000	White River	White River	-	-	200,000
Squaxin/South Sound Net Pens	Puget Sound	F. CK	Squaxin Island Tribe	500,000	Deschutes / Green River	Squaxin/South Sound Net Pens	-	-	-
Lummi Bay Hatchery	Puget Sound	Sp. CK	Lummi Nation	500,000	Kendall	Lummi Bay	-	50,000	500,000
Skookum Creek	Puget Sound	Early CK	Lummi Nation	1,000,000	Skookum Creek	Skookum Cr.	-	870,000	1,000,000
Klickitat Hatchery	Columbia River	F. CK	Yakama Nation	1,000,000	Klickitat/Little White	Klickitat River	-	1,000,000	1,000,000
Lewis River	Columbia River	Sp. CK	WDFW	-	Lewis River	Lewis River	944,425		316,000
TOTAL							4,323,222	10,850,280	10,130,200

^a Partially funded by PST with FY19 funds

SP CK = spring Chinook; F. CK = fall Chinook; WDFW = Washington Department of Fish and Wildlife

Table 2. Programs that received FY20 PST funding for the Hatchery Production Initiative for SRKW

Facility	Region	Species	Entity	Increased Proposal	Brood Source	Release Location	2020 Release	Anticipated 2021 Release ^a	Anticipated 2022 Release ^a	Operating Cost	Infrastructure Cost	Total Cost	Rational for Funding
Tulalip Bernie Gobin Hatchery	Puget Sound	Sum CK	Tulalip Tribe	1,000,000	Wallace	Tulalip Bay	-	1,000,000	2,000,000	\$555,914	\$783,414	\$1,339,328	Met Criteria 1, 2, 3, and 5. Criteria 6 is in process.
Tulalip Bernie Gobin Hatchery	Puget Sound	Sum CK	RCO overhead	-	N/A	-	-	-	-	-	-	\$55,180	See row above.
Soos Creek Hatchery	Puget Sound	F. CK	WDFW	2,000,000	Green River	Green River	-	2,000,000 ^c	-	\$245,559	-	\$245,559	Met criteria 1, 2, 3, 4, and 5. Criteria 6 is in process.
Soos Creek Hatchery	Puget Sound	F. CK	RCO overhead	-	N/A	-	-	-	-	-	-	\$10,117	See row above.
Partial funding for NWIFC marking trailer	Puget Sound	All	NWIFC	-	N/A	-	-	-	-	-	\$500,000	\$500,000	Federally funded hatchery production is required to be marked
Partial funding for NWIFC marking trailer	Puget Sound	All	RCO overhead	-	N/A	-	-	-	-	-	-	\$20,600	See row above
Marion Drain Hatchery	Columbia River	Sum. CK	Yakama Nation	500,000	Entiat/Wells/Chelan	Yakima River	-	500,000	-	\$43,000	-	\$43,000	Met criteria 1-6

Facility	Region	Species	Entity	Increased Proposal	Brood Source	Release Location	2020 Release	Anticipated 2021 Release ^a	Anticipated 2022 Release ^a	Operating Cost	Infrastructure Cost	Total Cost	Rational for Funding
Select-Area Fishery Enhancement (SAFE)	Columbia River	Sp. CK	ODFW	1,320,000 ^a	Willamette River	Youngs Bay or Tongue Point	-	1,400,000	-	\$600,000	-	\$600,000	Met criteria 1 through 5. Criteria 6 is in process.
SAFE	Columbia River	Sp. CK	ODFW	1,500,000	Willamette River	Youngs Bay or Tongue Point	-	-	1,500,000	\$251,477 ^b	-	\$251,477	See row above
Umatilla Hatchery	Columbia River	F. CK (URB)	ODFW	120,000	Little White	Umatilla River	120,000	-	-	\$30,000	-	\$30,000	Met criteria 1-6
Parkdale Hatchery	Columbia River	Sp. CK	CTWSR	Not enough BS; Funds need to be reallocated	Hood River	N/A	-	-	-	\$31,230	-	\$31,230	Met criteria 1-6
Round Butte Hatchery	Columbia River	Sp. CK	ODFW	Not enough BS. Funds reallocated to Bonneville tules	Deschutes River	N/A	-	-	-	\$0	-	\$0	Met criteria 1-6.
Bonneville Hatchery	Columbia River	F. CK (tules)	ODFW	200,000	Bonneville Pool	Columbia River	-	200,000	-	\$25,000	-	\$25,000	Met criteria 1-6
Wells Hatchery	Columbia River	Sum. CK	DPUD	500,000	Wells	Columbia River	-	500,000	-	\$170,000	-	\$170,000	Met criteria 1-6
Little White/Willard National Fish Hatchery (NFH)	Columbia River	F. CK (URB)	USFWS	630,000	Little White	Little White River	630,000	-	-	\$200,000	-	\$200,000	Met criteria 1-6

Facility	Region	Species	Entity	Increased Proposal	Brood Source	Release Location	2020 Release	Anticipated 2021 Release ^a	Anticipated 2022 Release ^a	Operating Cost	Infrastructure Cost	Total Cost	Rational for Funding
Little White/Willard NFH	Columbia River	F. CK (URB)	USFWS	650,000	Little White	Little White River	-	650,000	-	\$165,000	\$140,000	\$305,000	Met criteria 1-6
Spring Creek NFH	Columbia River	F. CK (tules)	USFWS	2,000,000	Columbia River Gorge tules	Columbia River	-	2,000,000	-	\$360,000	\$515,000	\$875,000	Met Criteria 1, 2, 3, 5, and 6.
Spring Creek NFH	Columbia River	Sp. CK	USFWS	400,000	Spring Chinook	Columbia River	-	-	400,000	\$160,000	-	\$160,000	Met criteria 1-6
TOTAL							750,000	8,250,000	3,900,000	\$2,585,703	\$1,938,414	\$4,861,491	

^a Tagcodes will be available after the fish are tagged. ^b Additional funding will be needed in FY21 to complete rearing and release of these fish. ^c Partially funded by WDFW
RCO = WA's Recreation and Conservation Office; CTWSR = Confederated Tribes of the Warm Springs Reservation of Oregon; DPUD = Douglas Public Utility District; USFWS = United States Fish and Wildlife Service; ODFW = Oregon Fish and Wildlife Service; NWIFC = Northwest Indian Fisheries Commission; BS = broodstock; URB = Upriver Bright fall Chinook salmon; NFH = National Fish Hatchery; SP CK = spring Chinook; F. CK = fall Chinook

Table 3. Hatchery programs selected as alternates to receive FY20 PST funds for the Hatchery Production Initiative for SRKW

Facility	Region	Species	Entity	Brood Year	Increased Proposal	Release Year	Operating Cost	Infrastructure Cost	RCO Overhead	Total Cost	Rational for Not Funding
Makah National Fish Hatchery	WA Coast	F. CK	USFWS	2020	500,000	2021	\$500,000	-	\$20,600	\$520,600	We would not be able to complete a NEPA analysis in time to use the funds (i.e., could not meet criteria 6). The cost of producing these fish is also high.
Quinalt Lake Hatchery	WA Coast	F. CK	Quinalt Indian Nation	-	-	-	-	\$110,000	\$4,532	\$114,532	We would not be able to complete a NEPA analysis in time to use the funds (i.e., could not meet criteria 6).
SAFE	Columbia River	Sp. CK	ODFW	2020	-	2022	\$535,000	-	-	\$535,000	This is the second year of funding BY20 SAFE spring Chinook. Expect to fund this in FY21.
SAFE	Columbia River	Sp. CK	ODFW	2020	750,000	2022	\$365,000	-	-	\$365,000	We are already funding many SAFE spring Chinook. We decided to focus on other programs to ensure a portfolio of stocks for SRKW (criteria 2)
Spring Creek NFH	Columbia River	F. CK	USFWS	-	-	-	-	\$300,000	-	\$300,000	The proposal was for full funding for a generator, which is needed for increased production at Spring Creek NFH. This portion of the cost of the generator was not funded with PST funds, but USFWS and NMFS split the remaining cost for the generator, and NMFS funded its portion with non-PST funds.
Carson NFH	Columbia River	Sp. CK	USFWS	2020	100,000	2022	\$40,000	-	-	\$40,000	Proposal was not submitted in time to be considered by the US v OR parties (i.e., did not meet criteria 5).
Issaquah Hatchery	Puget Sound	F. CK	WDFW	2020	1,000,000	2021	\$153,384	-	\$6,319	\$159,704	We would not be able to complete an ESA and NEPA analysis in time to use the

Facility	Region	Species	Entity	Brood Year	Increased Proposal	Release Year	Operating Cost	Infrastructure Cost	RCO Overhead	Total Cost	Rational for Not Funding
											funds (i.e., could not meet criteria 6).
Sawtooth Hatchery	Columbia River	Sp. CK	IDFG	2020	500,000	2022	\$107,500	\$2,500,000	-	\$2,607,500	Capital upgrades were too expensive (i.e., did not meet criteria 4).

Table 4. New hatchery production for Chinook salmon that is being funded by other entities outside of WDFW and PST

Facility	Region	Species	Entity	Release Location	Anticipated 2021 Release	Anticipated 2022 Release	Funding Source
Ringold Hatchery	Columbia River	F. CK (URB)	WDFW	Columbia River	1,000,000	1,000,000	U.S. COE
Bonneville/ Carson/ Walla Walla Hatcheries	Columbia River	Sp. CK	Variable	Walla Walla and Touchet Rivers	-	410,000	BPA
Dworshak Hatchery	Columbia River	Sp. CK	USFWS/NPT	Clearwater River	-	500,000	USFWS/NPT
TOTAL					1,000,000	1,910,000	

F. CK = Fall Chinook, Sp. CK = spring Chinook, U.S. COE = United States Corps of Engineers, USFWS = United States Fish and Wildlife Service; NPT = Nez Perce Tribe